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FROM: William Moschella**RE:** Informational Materials distributed by Brownstein Hyatt Farber Schreck, LLP (#5870)
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William Moschella

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Examples of U.S. Government protests of violations of VCCR Article 36 obligations

The United States has consistently and vigorously protested denials of prompt consular notification and access in the cases of U.S. citizens detained abroad, citing the requirements of Article 36 of the Vienna Convention on Consular Relations (VCCR). A few of the many available examples are summarized below, with source references.

Incommunicado detention of U.S. nationals in Argentina, 1976

The United States sent a sharply-worded diplomatic protest in 1976 regarding the incommunicado detention and alleged torture of U.S. citizens in Argentina (during the so-called Dirty War, in which thousands of civilians were disappeared and murdered). Then-Secretary of State Kissinger instructed the U.S. Embassy to vigorously protest the denial of prompt consular notification and access guaranteed under the VCCR, directly linked the failure to give "full effect" to the individuals' right "to request and receive a consular visit" with the mistreatment of Americans in custody, and emphasized the U.S. view that "nothing in local law can override the requirement to advise the American citizen without delay of that citizen's right under Article 36(1)(b) relating to access."¹

American Citizens in El Salvador, 1977

In 1977, two American missionaries were detained by Salvadoran authorities for taking a photograph of a police station, which was deemed a "national security installation" during a "state of siege." Citing VCCR requirements, the State Department lodged a protest note requesting the Salvadoran Minister of Foreign Relations to "elaborate expeditiously" as to "why the two United States citizens were not informed of their right to contact the Consulate...and why the Consulate was not officially informed of the detention of two United States citizens until approximately 28 hours afterward."² Four hours after the Consulate was "officially notified" of the detention, the two Americans were released from custody.

Detention of U.S. businessman in Belarus, 2001

In 2001, the United States "strongly protested to the Government of Belarus through diplomatic channels the deportation of U.S. citizen Robert Fielding from Belarus." Fielding was detained and subjected to a 10-hour interrogation and then summarily deported. In its public statement on the case, the U.S. Embassy emphasized that Belarus "is a signatory to the Vienna Convention on Consular Relations which assures notification, without delay, of home-country consular officers in cases where a foreign national is detained. The Government of Belarus acted with extraordinary haste to see that Mr. Fielding was deported before he could see a U.S. consular officer."³

¹ The full text of the telegram is available at <foia.state.gov/documents/Argentina/0000A114.pdf>.

² Department of State, *Digest of United States Practice in International Law*, 1977, at 290

³ U.S. Embassy Belarus, *Embassy Statement on Detention and Deportation of U.S. Citizen Robert Fielding* (Aug. 29, 2001), available at <<http://web.archive.org/web/20060922204928/http://minsk.usembassy.gov/html/fielding.html>>.

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Arrest of U.S. reporter in Sudan, 2006

Pulitzer Prize-winning reporter Paul Salopek was arrested in the Sudan when on assignment for National Geographic magazine to the Darfur region. Mr. Salopek was charged with spying, using official information, publishing false news and entering Sudan without a visa. He endured death threats, beatings and lengthy interrogations during his confinement. State Department officials "expressed concern that Sudanese authorities failed to notify the U.S. Embassy, as mandated by the Vienna Convention on Consular Relations, for nine days after Salopek was detained."⁴

Consular access in Belarus, 2008

Following the arrest and imprisonment in Belarus of American citizen Emanuel Zeltser, the State Department issued a press statement declaring that the authorities "failed to provide timely notification of his arrest, information about his medical condition, and did not inform the U.S. Embassy of his recent transfer to a state psychiatric hospital. Consular access in Belarus has long been a concern for the United States. We urge the Government of Belarus to comply with their international legal obligations and provide immediate and regular consular access to Emanuel Zeltser."⁵ At a meeting with a U.S. congressional delegation in June of 2009 at which the President of Belarus was asked to commute the sentence, the President declared: "If it is very important for America and our relations and contributes to normalising our relations, I will sign the pardon today."⁶ Mr. Zeltser was promptly pardoned and flown home.

U.S. journalists in North Korea, 2009

Two U.S. journalists were arrested in March of 2009 near North Korea's border with China, on accusations of illegal entry and "hostile acts." Because the United States and North Korea do not maintain formal diplomatic relations, consular services to U.S. nationals are instead provided by the Embassy of Sweden. After Swedish consular officers were denied prompt and ongoing access to the detainees, a State Department spokesperson declared that "as the Department of State as a whole, there is no higher priority for us than the safety and welfare of American citizens abroad," adding that the Department was "not aware of any kind of reasons that have been given to us as to why they're denying the consular access, which, of course, is contrary to the Vienna Convention."⁷

⁴ Michelle Austein, *Press Freedom Group Calls Journalist's Jailing "Disgraceful"* (Aug. 28, 2006), U.S. Department of State International Information Programs, available at <http://www.america.gov/st/washfile-english/2006/August/20060828161927hmnietua0.6934931.html>.

⁵ U.S. Dept. of State Press Statement, *Belarus. Access to Imprisoned U.S. Citizen* (Apr. 14, 2008), at <http://2001-2009.state.gov/r/pa/prs/ps/2008/apr/103530.htm>.

⁶ Belarusian Telegraph Agency, *Belarus President pardons Emanuel Zeliser* (June 30, 2009), available at <http://www.belta.by/en/news/president/?id=390027>.

⁷ U.S. Dept. of State, *Daily Press Briefing* (May 11, 2009), available at <http://www.state.gov/r/pa/prs/dpb/2009/05/123229.htm>.